

2023 SCC OnLine Bom 1847

In the High Court of Bombay

(BEFORE REVATI MOHITE DERE AND GAURI GODSE, JJ.)

Ankush Rajendra Magar ... Applicant;

Versus

State of Maharashtra ... Respondent.

Interim Application No. 2996 of 2023 and Criminal Appeal No. 900
of 2019

Decided on August 28, 2023

Advocates who appeared in this case :

Mr. Akshay Bankapur a/w. Mr. Kamlesh Palekar for the Applicant.

Mr. V.B. Konde Deshmukh, APP for the State.

P.C.

1. Heard learned counsel for the parties.

2. By this application, the applicant seeks suspension of his sentence and enlargement on bail, pending the hearing and final disposal of his aforesaid appeal.

3. The applicant alongwith other co-accused has been convicted vide judgment and order dated 8th May 2019 passed by the learned Additional Sessions Judge-3, Nashik as under:

— for the offence punishable u/s. 148 of the Penal Code, 1860, to suffer R.I. for three years and pay fine of Rs. 3,000/-, in default, to suffer further R.I. for three months;

— for the offence punishable u/s. 302 read with section 149 of the Penal Code, 1860, to suffer life imprisonment and pay fine of Rs. 25000/-, in default, to suffer further R.I. for two years.

— for the offence punishable u/s. 307 read with section 149 of the Penal Code, 1860, to suffer R.I. for seven years and pay fine of Rs. 5000/-, in default, to suffer further R.I. for one year.

— for the offence punishable u/s. 120B of the Penal Code, 1860, to suffer life imprisonment and pay fine of Rs. 25000/-, in default, to suffer further R.I. for two years.

4. All the sentences were directed to run concurrently.

5. Perused the papers as well as the orders, in particular the orders passed by this court suspending the sentence of all the co-accused and enlarging them on bail.

6. Learned counsel for the applicant in particular, seeks bail on the ground of parity. He submits that the role of Amit Dattatraya Vyawahare is similar to that of the applicant. Learned counsel for the

applicant relied on the order dated 20th January 2020 passed by this court (Ranjit More and Surendra P. Tavade, JJ.) in Interim Application No. 1 of 2019 in Criminal Appeal No. 900 of 2019.

7. The incident in question took place in the intervening night of 15th and 16th September 2015. In the said incident, one Mr. Rahul @ Gunaji Jadhav was murdered and Kishore Nagare was seriously injured. The FIR was lodged by Hiralal Thombare (PW-1). Admittedly, in the FIR the applicant has not been named as an accused. It is only in the supplementary statement, which was recorded after four days of the incident, that the applicant was named as an accused. The role assigned to the applicant is that of assault with a chopper.

8. It appears that out of the four witnesses, the first informant - Hiralal has not named the applicant, whereas, the other witnesses i.e. Kiran Kulkarni (P.W.-2), Sagar Pardeshi (P.W-3) and Sachin Kumawat (PW-4) have stated, that the applicant assaulted the deceased-Rahul with a sword. Admittedly, there is no recovery of sword at the instance of the applicant. It appears that a sword was recovered at the instance of co-accused Sunil Hansraj Senbhakta. The said co-accused Sunil Senbhakta's sentence has been suspended and he has been enlarged on bail.

9. Learned counsel for the applicant informs that the applicant has no antecedents. Statement accepted.

10. Apart from what is stated aforesaid, it appears that the applicant is in custody for about eight years. It is not in dispute that all the accused in the said case have been enlarged on bail.

11. Considering the aforesaid and the fact, that the applicant is in custody for more than 8 years, the application is allowed and the applicant's sentence is suspended and he is enlarged on bail, pending the hearing and final disposal of his aforesaid appeal, on the following terms and conditions:

ORDER

- (i) The Applicant be enlarged on bail on furnishing P.R. Bond in the sum of Rs. 25,000/- with one or two sureties in the like amount;
- (ii) The Applicant shall report to the trial Court, once in four months on the day/date specified by the trial Court, till the appeal is finally disposed of;
- (iii) The Applicant shall keep the trial Court informed of his current address and mobile contact number and/or change of residence or mobile details, if any, from time to time.
- (iv) If there are two consecutive defaults in appearing before the trial Court, the learned Judge shall make a report to the High Court and the prosecution would be at liberty to file an application seeking cancellation of bail.

12. Interim Application is allowed in the aforesaid terms and accordingly disposed.

13. All concerned to act on the authenticated copy of this order.

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